Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 304 of the	)	CS Docket No. 97-80
Telecommunications Act of 1996	)	
	)	
Commercial Availability of Navigation Devices	)	
	)	
Comcast Corporation's	)	CSR-7012-Z
Request for Waiver of	)	
47 C.F.R. § 76.1204(a)(1)	)	

Comments of Sony Electronics Inc.

June 15, 2006

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Comments of Sony Electronics Inc.[1]

In enacting Section 629 of the Communications Act, Congress directed the Commission to assure the commercial availability, to consumers, of navigation devices manufactured by parties not affiliated with any multichannel video programming distributor. The Commission subsequently determined "common reliance" – the principle that navigation devices deployed by cable operators must rely upon the same conditional access technologies and support infrastructure as devices offered for retail sale by unaffiliated manufacturers – to be a fundamental, necessary element in effectuating this Congressional directive. The request by Comcast Corporation ("Comcast") that the Commission waive the common reliance

[1] Sony Electronics Inc. ("SEL") is a consumer electronics manufacturer that offers CableCARD-ready televisions for sale in the United States.

requirement as set forth in 47 C.F.R. § 76.1207(a)(1) (the "Waiver Request") would undermine this fundamental principle and, accordingly, should be denied.

In support of its position, SEL contends that: 1) the Commission's conclusions about the fundamental consumer benefits of the common reliance requirement remain valid; 2) granting the Waiver Request would undermine the consumer benefits of common reliance; 3) the Waiver Request overstates the costs of common reliance; 4) the precedents cited by Comcast in support of the Waiver Request are inapposite; and 5) basic principles of equity prevent the FCC from granting the Waiver Request.

I. The Commission's Conclusions About the Fundamental Consumer Benefits of Common Reliance Remain Valid

In filing the Waiver Request, Comcast seems to disregard the well-established Commission conclusion that common reliance is fundamental to the proper implementation Section 629 of the Communications Act. The Commission made this finding in its initial 1998 order in this docket,[2] when it cited common reliance as one of five elements "*necessary* to ensure the movement of navigation devices toward a fully competitive market".[3] As the Commission explained:

> [T]he continued ability to provide integrated equipment is likely to interfere with the statutory mandate of commercial availability and that the offering of integrated boxes should be phased out. We agree

[2] *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd. 14775 (1998) ("*1998 Order*").
[3] *Id.* at ¶2 (emphasis added).

> with those commenters who note that integration is an obstacle to the functioning of a fully competitive market for navigation devices by impeding consumers from switching to devices that become available through retail outlets.[4]

In 2005,[5] the Commission affirmed its earlier finding, stating that "[a]t the heart of a robust retail market for navigation devices is the reliance of cable operators on the same security technology and conditional access interface that consumer electronics manufacturers rely on in developing competitive navigation devices."[6]

Notwithstanding this unequivocal policy decision, the Commission has twice extended the original common reliance deadline of January 1, 2005.[7] These delays have led to foreseeable problems in the navigation device marketplace. Despite the concerted efforts of consumer electronics ("CE") manufacturers to develop and market CableCARD products, substantial incompatibilities continue to exist between these devices and the cable networks to which they attach.[8] It is axiomatic that when the cable operators employ a separate support infrastructure in their proprietary products,

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[4] *Id.* at ¶69.
[5] *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 20 FCC Rcd. 6794 (2005) ("*2005 Further Extension Order*").
[6] *Id.* at 27.
[7] *See, generally*, *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 18 FCC Rcd. 7924 (2003); *2005 Further Extension Order.*
[8] *See* Letter from Julie M. Kearney, Senior Director and Regulatory Counsel, Consumer Electronics Association to Marlene Dortch, Secretary, Federal Communications Commission, and related documents (March 23, 2006) (detailing CableCARD compatibility problems experienced by various CE manufacturers).

products unaffiliated manufacturers will be disadvantaged. Separate is not equal.

Moreover, the postponement of the separable security requirement has resulted in the MSOs saturating the market with navigation devices that include integrated security. Thus, even if the Commission grants no additional waivers or extensions and the cable operators comply fully with the regulation, it will take many years before the number of separable security devices approaches the number of integrated devices in the market. SEL believes that, unfortunately, cable operators will not supply an equitable level of service to competitive devices until such devices comprise a substantial portion of those deployed in consumers' homes. The realization of a competitive market for navigation devices, therefore, cannot survive yet another action by the Commission that diminishes the scope, effectiveness, or urgency of the common reliance mandate.

II. Granting the Waiver Request Would Undermine the Consumer Benefits of Common Reliance

Granting the Waiver Request would have a substantial negative impact on the navigation device market. During the next year alone, Comcast plans to buy 1 to1.5 million units of just one model (the DCT-700) in the class of devices for which it seeks the waiver.[9] The Waiver Request does

[9] *See* Waiver Request at 5, 10. This admission would seem to support the request by CEA in its comments on the waiver request for a ban on subverting common reliance by "stockpiling" non-compliant boxes in advance of the July 1, 2007 deadline. *See* Comments of Consumer

not address Comcast's purchase plans for other models of so-called "low-cost, low-functionality" devices, nor does it indicate how many such devices it plans to purchase and deploy in subsequent years. Further, Commission rules require that, if granted, the benefits of the Waiver Request would run to similar devices deployed by other cable MSOs,[10] thereby broadening the scope of the waiver and further undermining the consumer benefits of common reliance.

On its face, the Waiver Request does not include enough information about its overall scope and impact for the Commission to make a fully informed determination on the impact that granting the request would have on common reliance. To do so, the Commission would presumably need to know the number of non-DCT-700 units that Comcast plans to purchase and deploy, as well as the purchase and deployment plans for all other MSOs. Further, the Commission would need this data both for the next year and for the foreseeable future.

In the absence of hard data, however, simple mathematics suggests that the impact of the waiver would be staggering. According to the best available information, Comcast controls approximately 33% of cable subscribers nationwide.[11] If each other MSO plans to deploy similar "low-cost,

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Electronics Association on Request for Waiver of 47 C.F.R. § 76.1205(a)(1), at 3 (June 15, 2006) ("CEA Waiver Comments").

[10] *See* 47 C.F.R. § 76.1207.

[11] *See* http://www.ncta.com/ContentView.aspx?contentId=54 (visited June 14, 2006) (65,500,000 basic cable subscribers); http://www.ncta.com/ContentView.aspx?contentId=73 (visited June 14, 2006) (21,449,000 Comcast subscribers).

low-functionality" devices in the same proportion as Comcast (and there is no reason to think they would not) the waiver would seem to cover to between 3 and 4.5 million MSO set-top boxes per year. By contrast, approximately 6 million CableCARD-ready devices from competitive manufacturers have been sold at retail between July 1, 2004, when the Commission's separable security requirement took effect, and March 31, 2006.

In short, grant of the Waiver Request would undermine a substantial percentage of the consumer benefits of common reliance. As explained by the Consumer Electronics Association such a grant would both perpetuate the lack of CableCARD scale economies,[12] and compound the support problems experienced to date by purchasers of competitive devices.[13] In each case, products of competitive entrants would be placed at a further disadvantage, future purchasers of such products would suffer from unnecessarily high prices due to the diminished cost efficiencies and, with past purchasers of such products, would be less likely to receive the same level of service and support from the MSOs.

Indeed, Comcast's argument in favor of the waiver request can be distilled to the following: "release us from our common reliance obligation, so that we will be better able to transition our networks from analog to digital."

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[12] *See* CEA Waiver Comments at 6-7. *See also*, *1998 Order* at ¶49. ("The record responding to the NPRM reflects strong advocacy that separating the security function will enhance portability of equipment generally. This requirement will facilitate the development and commercial availability of navigation devices by permitting a larger measure of portability among them, *increasing the market base and facilitating volume production and hence lower costs*." (emphasis added)).
[13] *See* CEA Waiver Comments at 7-10.

There is little, if any, Commission precedent for such favorable treatment. DBS and BOC IPTV service providers have needed no such incentive to deploy all-digital networks. The Commission did not subsidize broadcasters that have spent millions of dollars to upgrade their transmission facilities from analog to digital. Television manufacturers received no subsidy to assist in complying with the Commission's digital tuner requirements. Consumers should not be forced to suffer the loss of the benefits of common reliance because cable MSOs are stuck in the analog era.

III. The Waiver Request Overstates the Costs of Common Reliance

Although premised on the notion that compliance with the common reliance requirement would impose substantial costs on Comcast and, by extension, Comcast's customers, the Waiver Request offers little in the way of clarity about the precise nature and origin of these costs. Generally speaking, the overall cost of a CableCARD compatible device consists of three elements: 1) the research and development cost necessary to include a CableCARD slot in a host device; 2) the per device bill of materials ("BOM") cost for the same; and 3) the cost of the CableCARD itself.[14] As the Commission has recognized, common reliance is the proper mechanism to ensure that the overall costs of CableCARD compliance are as low as possible.[15]

[14] In addition, the cost of a CableCARD deployment typically includes the cost of a service technician visit required to actually deploy and activate CableCARD in the host device. But the necessity, frequency and, therefore, cost of sending a technician for CableCARD installation are solely within the control of the cable operators.
[15] *See 1998 Order* at ¶49.

Even so, SEL is particularly perplexed with the claim that "[w]hen the design and development costs [for devices subject to the waiver] are then added to the cost of a CableCARD, the overall cost of each device would increase greatly – on the order of 50 percent or more."[16] CableCARD is hardly a novel technology. The CableCARD 2.0 specification was first issued by CableLabs over a year ago,[17] and is based on standards that were available some time before that.[18] Research and development costs for implementing a technology of this vintage should be minimal. Further, the Commission's common reliance mandate dates from 1998. It is unclear why Comcast's suppliers failed to anticipate the need to conform their device designs to this regulatory requirement and manage their research and development costs accordingly.

Regarding the BOM cost for incorporating a CableCARD slot into a host device, it is SEL's experience that today, adding a CableCARD slot and associated software and hardware increases the per-host cost by less than $25.

Although, to the best of SEL's knowledge, the cost of the CableCARD itself is roughly $80, Comcast and its proprietary device suppliers do not, or at least should not, avoid this cost when deploying devices with embedded

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[16] Waiver Request at 17.
[17] *See* CableCARD 2.0 Interface Specification at ii, available at http://www.opencable.com/downloads/specs/OC-SP-CCIF2.0-I05-060413.pdf (visited June 15, 2006).
[18] *See id.* at 2 ("Portions of this specification have origins in EIA-679, the National Renewable Security Standard, which was initially adopted in September 1998. . . . This specification document is based on and conforms to much of the technical content as found in ANSI/SCTE 28, 2004."

security. CableCARDs perform the same conditional access function as the embedded security circuitry in an integrated device. Accordingly, CableCARDs use, or should use, the same chipsets, with the same power requirements, as their embedded counterparts. <u>In short, aside from the costs of the PCMCIA interface and the card form factor, which are minimal, the cost of a CableCARD itself should not differ substantially from the cost of embedded security in an integrated device</u>. Moreover, because, through CableLabs, MSOs exert exclusive control over the various CableCARD specifications, they are the best, indeed only, party in a position to reduce the costs of devices built to meet these specifications.

SEL does not contend that the costs of common reliance are incidental or irrelevant. Rather, given that the Waiver Request is premised in its entirety on the notion that common reliance will create an unacceptable cost burden on MSOs and their customers, SEL believes that the Commission must investigate thoroughly the specific and actual costs involved. In addition, SEL wishes to make clear that it does not advocate enforcement this mandate simply to cause economic harm to Comcast and other MSOs. But the Commission has been more than accommodating to the cable operators, twice granting them a reprieve from the common reliance requirement. SEL fears that another reprieve would likely mean that a competitive market for CableCARD devices will never be realized.

IV. The Precedents Cited By Comcast In Support Of The Waiver Request Are Inapposite

The Waiver Request relies primarily on *In the Matter of BellSouth* ("*BellSouth*") to bolster its claim that the FCC has granted similar waivers in the past. However, *BellSouth* differs factually from Comcast's current waiver request to such an extent that it is irrelevant. First, the *BellSouth* waiver applied only to 40,000 customers in southern Florida and Atlanta, Georgia.[19] Comcast's proposed waiver would affect millions of customers spread over the entire area that Comcast serves. Second, had the FCC not granted the waiver to BellSouth, the impact on the company could have put it out of business. In the absence of a waiver, BellSouth would have incurred the burden and expense of building a completely new cable system in the specified region.[20] Comcast, conversely, will likely incur some additional costs, but nothing approaching the damaging costs at issue in *Bell South*. Finally, in the *BellSouth* case, consumers would have been harmed if the waiver had been *denied*, because they would have faced substantial inconvenience, including "disruptive residential visits."[21] In contrast, in the case at hand, customers would be harmed if the waiver is *granted* as they would not be able to access the benefits of the CableCARD as readily. These benefits include portability, facility of use, and the ability to access

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[19] *See In the Matter of BellSouth Interactive Media Services, LLC: Petition for Permanent Relief*, 19 FCC Rcd. 15607, 15609 (2004).
[20] *See id.* (listing the expenses BellSouth would have incurred in the absence of a waiver).
[21] *See id.* at 15611(noting, also, that customers would need "education regarding operation of new equipment").

programming without leasing a set-top box for each television. The above factual differences are especially important because the FCC specifically held that the *BellSouth* waiver "is specific to the circumstances." [22]

The Waiver Request cites several additional rulings as precedent establishing that the FCC has granted waivers for set-top boxes where compliance would unduly burden customers and providers. None is relevant here. In *In the Matter of Media General Cable of Fairfax County, Inc.*, the FCC noted that, consistent with the Cable Television Consumer Protection and Competition Act of 1992, one of the reasons it granted the waiver was to allow for "reasonable phase-in periods so that operators and ultimately consumers may not unreasonably be required to pay for replacing equipment…"[23] As the FCC has twice pushed back the effective date of the common reliance mandate, it has already provided for more than a "reasonable phase-in period."

In the Matter of GCI Cable, Inc. ("*GCI*"), like *BellSouth*, deals with a very limited geographical area and number of customers.[24] Also, in *GCI*, had the FCC not granted the waiver, GCI would have been forced to replace equipment that it would have had to replace again when its customers

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[22] *See id.* at 15612.

[23] *See In the Matter of Media General Cable of Fairfax County, Inc.: Petition for Special Relief*, 14 FCC Rcd. 9568, 9570 (1999).

[24] *See In the Matter of GCI Cable, Inc.: Petition for Special Relief*, 15 FCC Rcd. 10843, 10843 (2000) (dealing only with the Alaskan communities of Anchorage, Fairbanks, Kodiak, Homer, and Seward).

switched from analog to digital service.[25] No such equipment replacement would be necessary should the Waiver Request be denied. Finally, the waiver granted in *GCI* applied only to equipment that the cable company had already purchased. Comcast here seeks a much broader waiver, applying without limit to set-top boxes it will purchase and deploy in the future.

Lastly, *In the Matter of Pace Micro Technology PLC* is distinguishable because the FCC granted a waiver to avoid a disruption of cable services to Pace's customers.[26] Comcast customers do not face a potential disruption of service if the FCC does not grant the Waiver Request.

In sum, the precedent cited in the Waiver Request does not support an indefinite waiver of the common reliance requirement. That Comcast is left with little other option that to cite inapposite rulings in support of the Waiver Request strongly suggests that the current case exceeds the scope and differs in rationale from waivers that the Commission has previously granted.

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[25] *See id.* at 10844 (remarking that if the company replaces the equipment now, it will have to "replace [it] for a second time as customers migrate to digital service").

[26] *See In the Matter of Pace Micro Technology PLC: Petition for Special and Interim Relief*, 19 FCC Rcd. 1945, 1946 (2004) (arguing that because disruption in service would occur in the absence of a waiver, public interest requires the FCC to grant it).

V. <u>Basic Principles of Equity Weigh Against Granting the Waiver Request</u>

Based on the Commission's previous Orders establishing the doctrine of common reliance and assuring the separable security requirement, SEL and other CE manufacturers have collectively invested millions of dollars developing, manufacturing, and marketing CableCARD products, with the understanding based upon statutory command that the FCC would require the cable operators to satisfy the common reliance requirement. Indeed, from the point of view of the CE industry, the viability of the entire cable-ready device retail market is premised upon the doctrine of common reliance and the equitable marketplace this requirement will afford. The Commission has twice delayed the common reliance deadline, thus twice delaying the creation of the truly competitive market that will allow device manufacturers to realize a fair return on our investment. It seems clear that granting the Waiver Request would offend the basic principles of equity and fundamental fairness by once again denying U.S. consumers a robust marketplace for retail navigation devices that will lower costs and spur innovative solutions.

Comcast contends that the cost of compliance with the common reliance requirement will ultimately be borne by consumers. The CE industry, however, has already borne this burden, has collectively invested a substantial amount in CableCARD products and, as would be the case for Comcast, has either internalized those costs or passed them onto their customers. As noted above, SEL does not advocate common reliance to cause economic harm to Comcast and other MSOs and, indeed, would seriously consider a cost-neutral alternative. However, the CE/IT industry has invested significantly to create new and innovative CableCARD products, based on the Commission's prior findings and the Congressional mandate contained in section 629 of the Act. It is time that cable operators meet their statutory and regulatory obligations as well.

Conclusion

For the reasons set forth herein, Sony Electronics Inc. asks that the Commission deny the request of Comcast Corporation for waiver of 47 C.F.R. § 76.1204(a)(1).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Jim Morgan, do hereby certify that I have served a true and complete copy of the foregoing Comments of Sony Electronics Inc. on Comcast Corporation's Request for Waiver of 47 C.F.R. § 76.1204(a)(1) by overnight mail on the following:

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